

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: February 5, 2016

No. 15-38V

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LINDA ROCHE,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Dismissal; Insufficient Proof;  
Influenza (Flu) Vaccine; Tetanus  
Diphtheria Pertussis (TDAP)  
Vaccine; Polymyalgia  
Rheumatica; Fibromyalgia

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*Paul R. Brazil, Esq., Muller Brazil, LLP, Dresher, PA for petitioner.*

*Althea W. Davis, Esq., U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION**<sup>1</sup>

**Roth**, Special Master:

On January 12, 2015, Linda Roche [“Ms. Roche” or “petitioner”] filed a petition for Vaccine Compensation in the National Vaccine Injury Compensation Program [“the Program”],<sup>2</sup> alleging that the influenza and tetanus-diphtheria-pertussis [TDAP] vaccinations that she received on November 15, 2013 caused her to suffer from polymyalgia rheumatica and fibromyalgia. The information in the record, however, does not show entitlement to an award under the Program. On January 14, 2016, petitioner moved for a decision dismissing this petition.

To receive compensation under the Program, petitioner must prove either 1) that she suffered a “Table Injury”—i.e., an injury falling within the Vaccine Injury Table—corresponding to one of her vaccinations, or 2) that she suffered an injury that was actually caused by a vaccine. *See* §§ 13(a)(1)(A) and 11(c)(1). An examination of the record did not uncover any evidence that petitioner suffered a “Table Injury.” Further, the record does not contain persuasive evidence indicating that petitioner’s alleged injury was vaccine-caused.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 13(a)(1). In this case, because there are insufficient medical records supporting petitioner's claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion that supports a finding of entitlement.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that she suffered a "Table Injury" or that her injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

**s/Mindy Michaels Roth**

Mindy Michaels Roth  
Special Master